

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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BENJAMIN ESPINOSA.

Plaintiff,

v.

WILLIAM GITTERE, *et al.*

Defendants.

Case No. 3:21-CV-00205-ART-CLB

**ORDER GRANTING PLAINTIFF'S
MOTIONS TO SUBSTITUTE
DEFENDANT AND EXTENSION OF TIME
AND
DENYING DEFENDANTS' MOTION FOR
EXTENSION OF TIME AS MOOT**

[ECF Nos. 49, 50, 51]

11 Currently pending before the Court are Plaintiff's motion to substitute party, (ECF
12 No. 50), motion to extend time, (ECF No. 51), and Defendants' motion to extend the
13 deadline for dispositive motions. (ECF No. 49.) For the reasons stated below, the Court
14 grants Plaintiff's motions to substitute party and extension of time, (ECF Nos. 50, 51), and
15 denies Defendants' motion to extend the dispositive motion deadline as moot. (ECF No.
16 49.)

17 | I. MOTION TO SUBSTITUTE A PARTY

18 First, the Court will address Plaintiff's motion to substitute a party. (ECF No. 50.)
19 The Court construes this motion as a motion to amend pursuant to Fed. R. Civ. P.
20 15(c)(3). This rule allows an amended pleading to relate back to the date of the original
21 pleading when the amendment changes the name of a party against whom a claim is
22 asserted if the claim asserted arose out of the conduct, transaction, or occurrence set
23 forth or attempted to be set forth in the original pleading. (*Id.*)

24 Plaintiff requests the Court allow him to substitute a Defendant because he
25 originally identified the incorrect Defendant. Previously, the Court granted Plaintiff's
26 motion to substitute Doe defendant, (ECF No. 31), which substituted CN I Medical
27 Caldwell for John Doe Nurse 3. (ECF No. 36.) The Court found that the substitution of the
28 Doe defendants relates back to the conduct alleged in the original complaint, (ECF No.

1 1-1), and the first amended complaint, (ECF No. 23). (*Id.* at 2.) Plaintiff explains that, upon
 2 reviewing documents received during discovery, he realized he misidentified the person
 3 identified in his lawsuit as “John Doe Nurse 3” (ECF No. 50 at 1.) Now, Plaintiff requests
 4 the Court substitute CN I Medical Caldwell for Nurse Jones at Ely State Prison. (*Id.*)

5 Because the substitution of Nurse Jones relates back to the conduct alleged in the
 6 original complaint, (ECF No. 1-1), and the first amended complaint, (ECF No. 23), the
 7 Court grants Plaintiff’s motion to substitute a party. (ECF No. 50.)

8 **II. MOTIONS FOR EXTENSION OF TIME**

9 The Court now turns to Plaintiff’s motion to extend time. (ECF No. 51.) In his
 10 motion, Plaintiff requests an additional 45-day extension to file dispositive motions. (*Id.*)
 11 Based on the current posture of the case, and the fact that Defendants also moved to
 12 extend the dispositive motion deadline, the Court grants Plaintiff’s motion to extend time,
 13 (ECF No 51), as follows:

Deadline	Date
Dispositive Motion Deadline	May 15, 2023
Joint Pretrial Order Deadline (or 30 days following the entry of the court’s ruling on a dispositive motion)	September 18, 2023

21 Based on the above, Defendants’ motion for extension of time to file dispositive
 22 motions, (ECF No. 49), is denied as moot.

23 **III. CONCLUSION**

24 **IT IS THEREFORE ORDERED** that Plaintiff’s motion to substitute defendant, (ECF
 25 No. 50), is **GRANTED**.

27 ¹ The Court’s Screening Order, (ECF No. 22 at 13), identified multiple Doe
 28 Defendants. The instant motion relates only to the Defendant identified in the Screening
 Order as “John Doe Nurse 3.” (See ECF No. 50.)

1 **IT IS FURTHER ORDERED** that the first amended complaint shall be deemed
2 amended to reflect the following: "Nurse Jones" shall be amended and substituted for "CN
3 I Medical Caldwell". In addition, the Clerk of Court shall **CHANGE** the docket to reflect
4 these amendments.

5 **IT IS FURTHER ORDERED** that the Clerk shall **SEND** a copy of this order, along
6 with a copy of Espinosa's First Amended Complaint, (ECF No. 23), and a copy of the
7 Court's Screening Order entered March 4, 2022, (ECF No. 22), to the Office of the
8 Attorney General of the State of Nevada, attention Andrew Christian Nelson. The Office
9 of the Attorney General shall advise the Court on or before, **Wednesday, April 12, 2023**
10 whether they can accept service of process for **Defendant Nurse Jones**. If the Attorney
11 General accepts service of process for any of these defendants, such defendant shall file
12 and serve an answer or other response to the first amended complaint within sixty (60)
13 days of the date of entry of this order.

14 **IT IS FURTHER ORDERED** that if the Attorney General will not accept service for
15 any of these defendants on the ground that they are a former employee of the Nevada
16 Department of Corrections, then the Attorney General shall submit that former employee's
17 last known address to the Court under seal.

18 **IT IS FURTHER ORDERED** that Plaintiff's motion to extend time to file dispositive
19 motions, (ECF No. 51), is **GRANTED as described above**.

20 **IT IS FURTHER ORDERED** that Defendant's motion to extend time, (ECF No. 49),
21 is **DENIED** as moot.

22 **DATED:** March 30, 2023.



UNITED STATES MAGISTRATE JUDGE

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